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SEATTLE CITY COUNCIL

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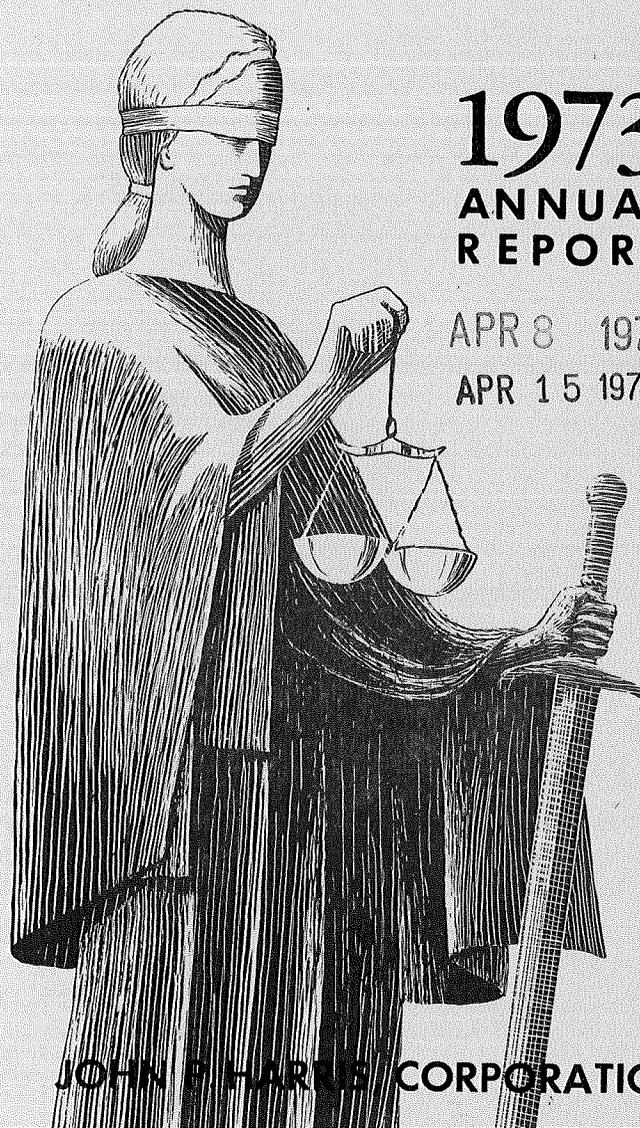
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# CITY OF SEATTLE LAW DEPARTMENT

## 1973 ANNUAL REPORT

APR 8 1974 HUMAN RESOURCES & JUD.

APR 15 1974 *On File*



278729

JOHN F. HARRIS CORPORATION COUNSEL

ASSISTANT CORPORATION COUNSEL

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JAMES B. HOWE, JR.  
DONALD H. STOUT  
MYRON L. CORNELIUS  
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RICHARD E. MANN  
HELEN WILSON  
RICHARD S. OETTINGER  
JAMES G. BLAIR  
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P. K. ABRAHAM

THE CITY OF SEATTLE  
LAW DEPARTMENT

MUNICIPAL BUILDING • SEATTLE, WASHINGTON 98104  
AREA CODE 206 TELEPHONE 583-2304

JOHN P. HARRIS, CORPORATION COUNSEL

CITY PROSECUTORS  
ROBERT M. ELIAS  
JACK B. REGAN  
ROBERT B. JOHNSON  
JOSEPH T. SCHLOSSER

CLAIMS MANAGER  
V. L. PORTER

March 29, 1974

SEATTLE CITY COUNCIL  
74 MAR 29 PM 3:33

The City Council  
Seattle

Honorable Members:

We transmit herewith the Law Department's  
1973 annual report to the Mayor and City Council.

Yours very truly,

JOHN P. HARRIS  
Corporation Counsel

BY

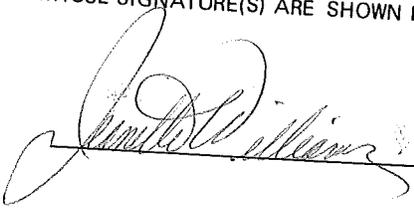
*James M. Taylor*  
JAMES M. TAYLOR  
Assistant

JMT:w  
Encl. - Official Copy

TIME AND DATE STAMP

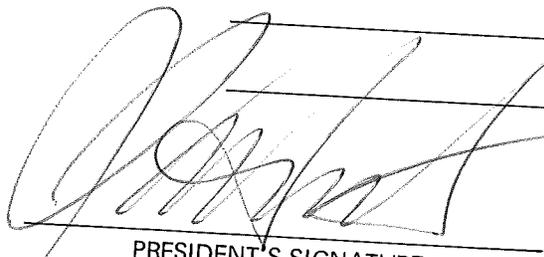
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**FOR CITY COUNCIL PRESIDENT USE ONLY**

COMMITTEE(S) REFERRED TO: H. R. G.

  
\_\_\_\_\_  
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PRESIDENT'S SIGNATURE

**CITY OF SEATTLE**  
**LAW DEPARTMENT**  
**ANNUAL REPORT**  
**1973**

JOHN P. HARRIS, *Corporation Counsel*

**ASSISTANTS CORPORATION COUNSEL**

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**LEGAL INTERNS**

PHILLIP ARRON  
SOPHIE M. JOHNSON

JOHN P. HARRIS  
*Corporation Counsel*  
SEATTLE

To the Mayor and City Council of The City of Seattle:

Submitted herewith is the annual report of the Law Department of The City of Seattle for the year ending December 31, 1973, as required by Section 12, Article XXII of the City Charter.

The statistics and resumes in this report summarize the activities of the Law Department during Mr. A. L. Newbould's last year as Corporation Counsel of The City of Seattle. Mr. Newbould had more than 20 years service in the Law Department and served as the City's Corporation Counsel from 1963 to 1973, a decade which is marked by a substantial increase in both the volume and complexity of the work performed by the Law Department. Mr. Newbould brought outstanding legal talents, a commitment to the ideal of service for the public good, and high personal integrity to the office of Corporation Counsel and he is responsible for the Law Department's success in meeting its increased responsibilities and for the excellent professional reputation which the office enjoys.

An idea first conceived and advocated by Mr. Newbould came to fruition in 1973 when the Seattle City Council enacted a revised Seattle Criminal Code which had been prepared in proposed form by the Seattle-King County Bar Association through its Municipal Criminal Code Revision Project. The new criminal code will become effective December 3, 1974. This is believed to be the first municipal criminal code revision project implemented anywhere in the country.

Also in 1973 the voters approved a Charter amendment requested by my predecessor which provides for the payment of claims of \$2500 or less without the necessity of an ordinance authorizing each payment and which allows payment of all other claims immediately upon passage and approval of the authorizing ordinance. This amendment will greatly facilitate the processing of claims payments.

On January 1, 1973, the Municipality of Metropolitan Seattle (Metro), as previously authorized by the voters, assumed public transportation responsibilities within its boundaries. Pursuant to agreement between the Corporation Counsel and Metro, the Law Department during 1973 handled damage claims and lawsuits against Metro arising from the operation of its vehicles and facilities, whether the claims occur inside or outside the City limits. Although this program has been successfully implemented, it has resulted in a substantial increase in the departmental workload which has not been matched by any increase in staffing.

The statistics set forth elsewhere in this report evidence the increasing volume of this department's responsibilities during 1973, and provide a comparison with statistics for the year 1963 at which time the professional staff of the Law Department, in addition to the Corporation Counsel and Chief Assistant, consisted of thirteen Assistants and two

Prosecutors. During the decade 1963 - 1973, the staff increased to twenty Assistants, four Prosecutors, and two part-time legal Intern positions under a program for minority law students sponsored by the Law Department in conjunction with the University of Washington Law School. However, the increase in staff (59%) was more than matched by the increase during the same period of the number of suits and other civil proceedings commenced (from 157 to 433 — 176%); the amount of damages claimed in suits filed against the City (from approximately \$3 million to nearly \$21 million — 600%); the number of appeals from Municipal Court disposed of in Superior Court (from 538 to 996 — 85%); the number of formal written opinions (from 55 to 172 — 213%); the number of ordinances drafted (from 367 to 771 — 110%); and similar increases in every other aspect of the Law Department's responsibilities.

In addition to the above, substantial new commitments have been undertaken with respect to a growing number of administrative proceedings at federal, state and local levels including the application to the Federal Power Commission for a federal license to raise the height of Ross Dam; proceedings before the Interstate Commerce Commission regarding the proposed abandonment of the Burlington-Northern Railroad right-of-way between Fremont and Kenmore; numerous proceedings before the I-90 Review Board, Shorelines Hearing Board, Washington State Board of Industrial Insurance Appeals, Civil Service Commission, Design Commission, Planning Commission, Board of Public Works, Board of Adjustment, Human Rights Commission, the City's Pension and Retirement Boards, and many others. Such administrative proceedings affect a great variety of rights and obligations, and at the City level are becoming of increasing importance and more formally structured as the City's Administrative Code is implemented.

To meet this growing workload, I have undertaken a staff organization which will provide an increased level of responsibility for and supervision of Law Department functions and programs. As the initial basis for such organization, Ordinance 102852 established one additional position of Chief Assistant Corporation Counsel. Further implementation which I will recommend will make full use of the abilities of personnel trained and qualified as para-professionals, working with professional personnel.

As noted above, the City's demand for legal services of all kinds is increasing at an ever accelerating rate. The legal services provided to the City by this department are not optional programs which may be undertaken, curtailed, or eliminated on the basis of administrative policy decisions. Rather, the services provided by this department are primarily undertaken in response to mandatory, or demand requirements for legal services which must be met if the City is to be represented in court and if City departments and officials are to receive the timely advisory assistance and myriad other legal services which are essential to their continued successful operation.

If we are to continue to provide these services in accordance with the standards and ethics of our profession there must be a substantial

increase in the size of our staff and our specific requirements in this regard will be set forth in our 1975 budget request.

Finally, I wish to express my appreciation to all the members of the Law Department: lawyers, secretaries, and claims adjusters, for the dedicated, professional way in which they carried out their respective assignments during the past year.

Respectfully submitted,

A handwritten signature in cursive script that reads "John P. Harris". The signature is written in dark ink and is centered on the page.

JOHN P. HARRIS  
*Corporation Counsel*

**I.**  
**GENERAL STATEMENT OF LITIGATION**

**1. Tabulation of Cases:**

The following is a general tabulation of suits and other civil proceedings commenced, pending and ended in the Municipal, Justice, Superior, Federal and Appellate courts during the year.

	Pending Dec. 31 1972	Commenced during 1973	[1963]	Ended During 1973	[1963]	Pending Dec. 31 1973
Condemnation suits.....	17	4	(8)	16	(9)	5
Damage for personal injuries .....	162	110	(77)	106	(88)	166*
Damages for other than personal injuries .....	62	87	(22)	23	(27)	126**
Injunction suits .....	35	28	(10)	20	(8)	43
Mandamus proceedings .....	10	6	(3)	5	(3)	11
Habeas Corpus .....	1	6	(-)	5	(-)	2
Certiorari Writs .....	7	6	(4)	3	(3)	10
Administrative proceedings	10	4	(-)	5	(-)	9
Municipal Court Civil						
Actions .....	49	108	(-)	56	(-)	101
Miscellaneous proceedings..	221	74	(31)	65	(22)	230
Sub-total .....	574	433	(157)	304	(162)	703
Appeals for Municipal Courts (Traffic and Police) .....	744	980	(525)	996	(538)	728
Grand Total .....	1,318	1,413	(682)	1,300	(700)	1,431

\*Including 11 Metro cases.

\*\*Including 2 Metro cases.

**2. Segregation - Personal Injury Actions:**

	Number	Amount Involved
Pending December 31, 1972 .....	162	\$18,792,595.84
Commenced since January 1, 1973 .....	110	16,970,911.37
Total .....	272	\$35,763,507.21
Tried and concluded since January 1, 1973 .....	106	10,661,862.99
Actions pending December 31, 1973 .....	166*	\$25,101,644.22

\*Includes six cases in which amount of damages is unspecified.

Of the 106 personal injury actions concluded in 1973, 8 involving \$1,401,477.65 were won outright. In 2 cases in which \$21,500 was claimed, plaintiffs recovered \$8,456.60. Of the remaining 96 cases in which plaintiffs claimed \$9,238,885.34, 36 involving \$3,708,542.00 were covered by insurance and the other 60 cases, involving \$5,530,343.34 were settled or dismissed without trial for a total of \$148,961.66.

### 3. Segregation - Damages Other Than Personal Injuries:

	Number	Amount Involved
Pending December 31, 1972 .....	62	\$5,335,789.74
Commenced since January 1, 1973 .....	87	4,008,006.02
Total .....	149	\$9,343,795.76
Tried and concluded since January 1, 1973 .....	23	237,002.74
Pending December 31, 1973 .....	126*	\$9,106,793.02

\*Includes four cases in which amount of damages is unspecified.

Of the 23 cases involving damages other than personal injuries concluded in 1973, 3 involving \$383.50 were won outright. In 5 cases involving \$1,465.96 plaintiffs recovered \$950.31. The remaining 15 cases involving \$235,153.28 were settled or dismissed without trial for a total of \$10,150.00.

The above actions concluded in 1973 involving both personal injuries and damages other than personal injuries are further classified as to department or activity involved, as follows:

	Number	Amount Paid
Board of Public Works .....	1	\$ 0
Building/Fire Departments .....	7	0
Engineering Department:		
Sewer Utility .....	4	700.00
Sidewalk .....	8	10,384.60
Street .....	12	43,594.78
Miscellaneous .....	2	7,400.00
Executive Department:		
Animal Control Division .....	1	1,250.00
Human Rights Department .....	1	0
Light Department .....	4	1,499.57
Municipality of Metropolitan Seattle .....	3	3,500.00
Parks and Recreation Department .....	2	2,440.00
Police Department (33 cases covered by insurance) .....	41	4,769.56
Seattle Center (1 case covered by insurance) .....	3	8,150.00
Seattle Model City Program .....	2	0
Transportation Department .....	34	84,713.99
Water Department (2 cases covered by insurance) .....	4	116.07

### 4. Appeals and Extraordinary Writs:

At the close of 1972, ten appeals involving the City were pending in the State Supreme Court, twenty-five in the State Court of Appeals, and two in the United States Court of Appeals.

In 1973, two new appeals were filed in the State Supreme Court, thirty-five appeals were filed in the Court of Appeals, one was filed in the United States Court of Appeals, and one petition for a Writ of

Certiorari was filed in the United States Supreme Court. Two appeals were transferred from the State Court of Appeals to the State Supreme Court, another was remanded by the State Supreme Court to the Court of Appeals, and the Supreme Court accepted petitions by the City for review of the Court of Appeals decision in two other cases.

The City prevailed in eleven of the fourteen cases involving the City in which the State Court of Appeals rendered a decision in 1973. An additional thirteen cases before the State Court of Appeals in which the City had prevailed in lower court were dismissed by agreement of the parties or for want of prosecution. One case which the City had appealed to the State Court of Appeals became moot and the appeal dismissed.

In appeals before the State Supreme Court, the City prevailed in three of the seven cases involving the City in which the Supreme Court rendered a decision in 1973. Four cases in which the City had prevailed in lower court were dismissed by agreement of the parties or for want of prosecution.

The City also prevailed in one of the two cases involving the City decided by the United States Court of Appeals.

At the close of the year there were four appeals pending in the State Supreme Court, thirty-one in the State Court of Appeals, one in the United States Court of Appeals, and one in the United States Supreme Court.

#### **5. Miscellaneous Cases**

Sixty-five miscellaneous cases were completed during 1973, of which the City lost five and won or otherwise disposed of 60; 230 cases are still pending.

In addition, 20 injunctive actions were tried, of which the City won 18 and lost 2; 43 injunctive actions are pending. Five mandamus actions were tried, one was settled by the parties and four were lost; 11 are pending. Three writs of certiorari were completed and won during 1973; ten others are pending. Five habeas corpus writs were processed; two are pending.

#### **6. Antitrust Damage Actions:**

Three cases alleging damages to the City from violations of federal antitrust laws and involving water meters, liquid asphalt and automobiles were pending at year's end. In addition, the City has pending claims in class actions involving antibiotic drugs, accredited central station protection services, cast iron pipe, and milk products. Also pending is an action by the City against the American League of Professional Baseball Clubs, its member clubs and Washington Sportservice, Inc., alleging damages from violation of the State Consumer Protection Act in connection with the removal to Milwaukee of the Seattle Pilots baseball club.

**II.**  
**CLAIMS IN 1973**

The Claim Division of the Law Department investigates all claims filed against the City, and in the event of litigation assists the legal staff pending ultimate disposition of the case. The following tabulation reflects the Claim Division's activities during 1973:

	Number	[1963]	Amount Involved	[1963]
On file January 1, 1973 .....	2,152	(1,176)	\$81,262,028.79	(\$8,138,236.23)
Referred for investigation .....	1,253	(952)	37,014,322.85	(11,698,626.94)
Closed without payment .....	511	(502)	6,326,244.28	(3,187,230.60)
Claims paid .....	523	(583)		
		(Asked)	481,959.29	(2,954,591.67)
		(Paid)	175,084.22	(504,499.36)
On file December 31, 1973 .....	2170		\$93,672,675.66	

With the assumption by Metro Transit of the services formerly provided by the Department of Transportation, effective January 1, 1973, the City entered into an agreement with the Municipality of Metropolitan Seattle to provide claims service on a contract basis.

During the year, 1,798 reports of accidents were investigated, 540 claims were filed, 256 claims involving \$74,721.36 were settled for \$51,112.53, and reserves for the settlement of unpaid and outstanding claims were established in the amount of \$103,700.00.

Payment of \$175,084.22 in settlement of 523 claims involving the various departments of the City was effectuated by 86 ordinances which were prepared and presented to the City Council. Following is a tabulation showing in detail the departments involved and the amounts paid:

	Number	Amount Paid
Building .....	1	\$5,750.00
Board of Public Works .....	1	1,978.00
Engineering:		
Construction .....	6	1,137.49
Sanitary Sewer .....	1	190.00
Sewer Utility .....	42	18,298.02
Sidewalks .....	20	4,537.61
Solid Waste Utility .....	3	1,394.50
Storm Sewer .....	6	2,579.40
Street Maintenance .....	30	3,539.37
Traffic .....	2	418.82
Executive .....	3	325.00
Lighting .....	77	32,836.64
Parks and Recreation .....	13	2,382.45
Police .....	29	1,441.56
Seattle Center .....	5	3,305.49
Transportation (Seattle Transit) .....	74	30,281.47
Water .....	36	11,422.90
Vehicle Fleet (All Departments)* .....	174	53,265.50
Totals .....	523	\$175,084.22

\*During the year, 632 accidents were evaluated and 247 claims were filed. The estimate of ultimate claims cost for the year is \$93,133.41.

### III. OPINIONS

During the year, in addition to innumerable conferences with City officials concerning municipal affairs of which no formal record is kept, this department rendered 172 written legal opinions involving considerable legal research on close questions of law submitted by the various departments of City government.

In addition, 34 opinions on L.I.D. bond issues were requested by and rendered to the City Employee's Retirement System.

The following is a chronological resume of the written opinions rendered to the various departments of the City government throughout the year.

### INDEX OF 1973 OPINIONS BY NUMBER

- 5668 Accrual of the Cause of Action on an "open and current account"; and the applicable statute of limitations to express or implied contracts not in writing.
- 5669 Public corporation is "local public body" eligible to apply for open space or historic preservation grant assistance from HUD.
- 5670 Limitation of campaign expenditures under Ordinance 100241 and Initiative 276.
- 5671 Fire Department vehicles are "authorized emergency vehicles" under RCW 46.04.040.
- 5672 Utilization of polygraph tests during interviews of recruit firefighter candidates.
- 5673 Financial implications of Resolution encouraging community organizations.
- 5674 C.F. 273831 - Lease of Crown Building.
- 5675 C.F. 273009 - Use of sick leave credits by retired transit employees.
- 5676 Metro employees formerly employed by Seattle Transit System are not entitled to promotional eligibility for positions in the City's classified civil service.
- 5677 C.F. 274585 - Transfer of taxi permits.
- 5678 Authority of Police Department as to King County Stadium.
- 5679 Revocation of license for violation of health and sanitation standards.
- 5680 Urban renewal development office not a permitted conditional use in RS 5000 zone.
- 5681 Civil Service Commission does not have power to investigate suspensions imposed under Article XVI § 12 of the Charter.
- 5682 Offer of M. Bloch & Co. to execute option to purchase old Alaska Street substation site.
- 5783 Private conferences by members of the City Council with proponents or opponents of a specific rezoning or zoning administration case may invalidate Council action taken in any such case.
- 5684 Enforcement of City of Seattle Housing Code (Ordinance 99112) Section 27.36.050.
- 5685 Joint non-profit organization, Seattle and King County Arts Commissions.
- 5686 Ordinance 100642 prohibiting discrimination in employment not applicable to Seattle School District No. 1.
- 5687 Effect of Section 4, Chapter 118, Laws of 1972, Ex. Sess. upon authority of City to require street use and obstruction bonds under Ordinance 90047, and to license and require public liability insurance and bonds of side sewer contractors under Ordinances 97016 and 48022.
- 5688 Establishment of "parking and business improvement areas" under RCW Chapter 35.87A.
- 5689 Park Acquisition and Development Fund Planning Expenditures prior to Property Acquisition.

- 5690 Admission taxes not applicable to school-sponsored concert.
- 5691 Location of Queen Anne Swimming Pool Site at or near possible new site of Queen Anne High School.
- 5692 Patentability of "new design" for stop sign posts.
- 5693 Concurrent application of campaign expenditure limitations under Section 14 of Initiative 276 and Section 16 of the Fair Campaign Practices Ordinance (No. 100241).
- 5694 City Compliance with State of Washington Environmental Policy Act of 1971.
- 5695 Disposition of Proceeds from sale of structures acquired from Park Acquisition and Development Fund.
- 5696 Licensed security guards under 21 may carry unconcealed pistol in connection with their employment.
- 5697 C.F. 274616 - Use of City vehicles by contract employees.
- 5698 C.B. 93466, Police Officers' Bill of Rights.
- 5699 Feasibility of City action against Environmental Protection Agency for impoundment of funds authorized by Federal Water Pollution Control Act.
- 5700 Use of Revenue Sharing Funds for certain projects.
- 5701 Use of Revenue Sharing Funds for Housing Rehabilitation through the Seattle Housing Authority.
- 5702 Regulation and control of parking lot operations.
- 5703 Whether kennel is a "commercial kennel" or "pet kennel" is question of fact.
- 5704 Whether proposed coronary examination program for Seattle firemen is a proper expense of Firemen's Pension Fund.
- 5705 Compliance with State Environmental Policy Act in selection of Queen Anne Swimming Pool Site.
- 5706 Authority of Pioneer Square Historic Board over "Seattle Underground."
- 5707 Proposed sale of portion of property acquired from Park Acquisition and Development Fund.
- 5708 Use of "Seattle Fire District No. 5 Fund" for Fire Station improvements.
- 5709 Wage rates in small demolition contracts.
- 5710 Fifth year Model Cities funding.
- 5711 Whether divorced wife is entitled to surviving spouse's Option D retirement benefit and to death benefit where divorce decree awarded to husband as his separate estate all interest in the City Employees' Retirement System.
- 5712 Acceptance of public service donations.
- 5713 Effect of Initiative 276 upon Charter Article 18 §§ 4 and 5 and the Fair Campaign Practices Ordinance (No. 100241).
- 5714 Liability for damages of Citizens Housing Board.
- 5715 Ordinance requiring future appropriation ordinances for municipal construction projects to include 1% for art exceeds City's authority and violates budget law.
- 5716 Eligibility for benefits under Ordinance 90789 (conversion of accumulated sick leave credits) as to individual receiving retire-

- 5717 ment allowance under "vesting" provision of Ordinance 78444. Competitive bidding not required for contract for study of "zonal taxi fares."
- 5718 City Council without jurisdiction to adopt ordinance barring payment to any employee who has been given a temporary appointment for service beyond sixty days.
- 5719 Age limitation established by Civil Service Commission under authority of Article XVI § 6 is imposed "under a law or ordinance fixing or authorizing age limits."
- 5720 Hitchhiking citations by Seattle Police Department in area where hitchhiking allowed by Washington State Patrol.
- 5721 Seattle School District proposal to locate school on Montlake Playfield.
- 5722 Inspection and copying of Health Department records pertaining to food establishments under Initiative 276.
- 5723 Vacation time of retired police officers reemployed by the City.
- 5724 Queen Anne Swimming Pool site location.
- 5725 R. H. Thomson Expressway - Yesler Atlantic Community.
- 5726 West Seattle Golf Course Parcel No. 4.
- 5727 Transfer of Responsibility for operating City jail and/or Municipal Court probation services.
- 5728 Application of Ordinance 101838 (Charitable Solicitations) to non-profit organizations.
- 5729 Ordinance authorizing "return" of found money or property to finder would conflict with State law.
- 5730 Exemption of "Federal Revenue Sharing" appropriation from Budget Law (RCW Chapter 35.32A).
- 5731 Civil Service Commission's power to investigate under Article XVI § 14 is limited to investigating the administration of Article XVI of the Charter.
- 5732 Public inspection of campaign reports.
- 5733 Completion of Fairway Estates planned unit development within two years of authorization not required by Zoning Ordinance or City Council.
- 5734 Scope of authority of police officers under Uniform Alcoholism and Intoxication Treatment Act.
- 5735 Civil Service Commission should be given opportunity to rule on question relating to promotional examinations.
- 5736 Requirement of Initiative 276 as to inspection and copying of public records.
- 5737 Metro may replace existing East Pine Street Pump Station without further compensation to City if existing site restored to park uses.
- 5738 Relocation benefits.
- 5739 Partial Payments by State for a Pro Rata Share of Bay Freeway Expenditures — Agreement GC 2894.
- 5740 Street use permit required for street improvements whether for public or private use — Contracts for street vacations and rezoning.

- 5741 Westlake Public Market.
- 5742 Council may consider untimely appeal from Board of Adjustment if appellant misled by responsible City officer or employee as to time for filing.
- 5743 Payments from retained percentage to subrogee of subcontractor — priority of subrogated surety.
- 5744 Application of "public records" requirements of Initiative 276 as to tax information declared confidential by Ordinance 72630.
- 5745 C.B. 93937 - Leasing office space for "Little City Hall" with City Light Revenues.
- 5746 Application of "spending limitations" of Section 16 of Ordinance 100241 to "fund raising" expenditures.
- 5747 Departmental preparation of Environmental Impact Statements.
- 5748 Lessees not eligible for relocation assistance under RCW Ch. 8.26 required by renovation of Food Circus where leases expire.
- 5749 Local Improvements - Authority, Initiation.
- 5750 Wholesale water rates.
- 5751 City-owned land can provide local share of cost of urban renewal project, unless acquired for street purposes.
- 5752 Obstruction in street area - Special Fund.
- 5753 Jurisdiction over property acquired with Model City Funds; Lease of Cherry Hill Neighborhood Center.
- 5754 Exemption for Admissions Tax.
- 5755 Tax Property Sales Fund.
- 5756 Task Force Report, Seattle 2000 Commission.
- 5757 "Escalator" pensions under RCW 41.20.050 of police officers holding more than one position during last year of service should be computed proportionately to time served in each position during last year of service.
- 5758 C.F. 274405 - Ownership of Utility Tunnel at 3rd Avenue West and Ship Canal.
- 5759 Completion of Qualification Statement (Ordinance 100495 § 13).
- 5760 Requiring participation in pledge of allegiance to U.S. flag.
- 5761 Validity of regulations relating to length of hair of firemen.
- 5762 Deferral of LID Assessments of Economically Disadvantaged Property Owners - Chapter 137, Laws of Washington, 1972 1st Ex. Session.
- 5763 Review State Auditor's Report of Examination Lighting Department 1971.
- 5764 Sales Tax on duplication services.
- 5765 Obscenity Regulation — Recent Supreme Court Decisions.
- 5766 Completion of EEOC Non-discrimination Form.
- 5767 Use of Neighborhood Improvement Bond Proceeds in connection with other expenditures.
- 5768 Federal Uniform Relocation Assistance and Real Estate Policies Act of 1970 applies to Food Circus renovation, but lessees not eligible for assistance where leases expire.
- 5769 Election of Freeholder positions at large.

- 5770 Refusal of surgery for disc injury - fire fighter's disability benefits under RCW 41.26.150.
- 5771 *State of Washington v. J-R Distributors, Inc., et al.*, Nos. 42371-7; 42385; 42429.
- 5772 Agreement with University of Washington regarding Arboretum.
- 5773 Animal control enforcement procedures.
- 5774 Relocation Benefits; eligibility for "In Lieu of Moving Expense" payments of business tenants, Southwest Roxbury Widening.
- 5775 Compliance by Building Superintendent with SEPA in issuance of building and other permits.
- 5776 Model City Program Director authorized by ordinances to execute contracts for Youth Services Project and Consumer Protection Project.
- 5777 Authority of City to require financial statements from organizations conducting bingo or raffles and to collect costs of investigation.
- 5778 City Agreement to make appropriation for Indian Social Services Center.
- 5779 Special tap charge applies when temporary private connections transferred to new standard water mains if premises not previously assessed.
- 5780 Use of certain property (former rehabilitation camp for City prisoners) for Police Training Center permissible.
- 5781 Construction of Pedestrian Overpass in boulevard right of way as a "damaging" of abutting property owner's property.
- 5782 Suspension of Food Establishment Permit.
- 5783 Effect of Chapter 175, Laws of Washington 1973, 1st Ex. Sess. on authority of Civil Service Commission to examine for positions of "plumber" and "plumber leadman" in classified civil service.
- 5784 Employee Benefit Plans, Inc.
- 5785 Effect of Chapter 161, Laws of Washington 1973, 1st Ex. Sess. upon authority of City to license plumbing contractors and lawn sprinkler contractors under Ordinance 92190.
- 5786 Notwithstanding Civil Service Rule 8.02, EEA employee commenced to serve probationary period under Article XVI § 9 upon appointment from civil service register.
- 5787 Promotional and transfer rights of employees employed with the assistance of the Emergency Employment Act of 1971.
- 5788 "Supervisory and administrative" employees not entitled to overtime pay under Ordinance 97330.
- 5789 Validity of Scott's Electric lien, Garfield Playfield Expansion improvement, BPW Project No. 72-46.
- 5790 Civil Service Rules regarding seniority and lay-offs.
- 5791 Authority of Library Board of Trustees to make transfers of funds within the Library Budget.
- 5792 Jurisdiction over Auditorium Annex at Seattle Center.
- 5793 Limitation of campaign expenditures based on number of voters.
- 5794 Ordinance 100458 requiring City driver's permit not in conflict

- with Civil Service Commission job specifications, though question of disqualification of employee for failure to obtain necessary city permit premature.
- 5795 Release of medical information under Initiative 276.
  - 5796 License endorsements required for shop personnel driving vehicles defined in RCW 46.20.440.
  - 5797 Ordinance 101274 not applicable to member of City Employees' Retirement System permanently disabled prior to the effective date thereof.
  - 5798 Retroactive application of tax on gambling activities under Ordinance 102459 and public inspections of declarations and returns.
  - 5799 Damages - Termination of sign installation and maintenance agreements.
  - 5800 Settlement of EPCON Company sign contract claims — C.F. 274594.
  - 5801 Reimbursement of travel expenses incurred by library employees.
  - 5802 Collection of delinquent accounts in Small Claims Court.
  - 5803 Effect of Chapter 135, Laws of Washington 1973 on Disqualification of license applicant on basis of prior conviction.
  - 5804 Potential City liability for terminating contract with Diamond Parking, Inc., for operation of parking lots at certain City Park facilities.
  - 5805 Food Sales at Volunteer Park Museum.
  - 5806 Corporation which was incorporated by proprietor of used automobile business must obtain Used Automobile Dealer's License even though current license was issued to such proprietor.
  - 5807 Ownership of patent rights developed by City employees.
  - 5808 Application of 1% for art formula of Ordinance 102210 to requested expenditures to certain funds.
  - 5809 Voting as member of City Council on matter involving possible "conflict of interest."
  - 5810 Right of employee's former spouse to accumulated contributions where decree of divorce provides that all property acquired after specified date shall be separate.
  - 5811 Credit for military service while on leave from Police Department towards City Employees' Retirement System benefits not authorized where such military service preceded membership in said retirement system.
  - 5812 Employees' Retirement and Death Benefit System - right of ex-spouse and surviving spouse to benefits upon death of active employee member of System who had remarried.
  - 5813 Indian Services Commission Property.
  - 5814 Investment Adviser for Employee Retirement System.
  - 5815 Tract "B", Belvoir.
  - 5816 Columbia Street west of Alaskan Way.
  - 5817 Payment of \$41 bill from Children's Orthopedic Hospital.
  - 5818 Former police officer not eligible for refund of contributions paid

- into Police Relief and Pension Fund while employed in a position covered by the LEFF System.
- 5819 RCW 41.20.170 as amended by Laws of 1973, regular session, Chapter 143 § 2, makes no provision for refund of contributions previously made for pension credit for Police Cadet service.
  - 5820 Veterans' Preference Article XVI § 8.
  - 5821 City ownership and operation of cable television (CATV) system.
  - 5822 Application of Laws of 1973, regular session, Chapter 143 § 2.
  - 5823 Ordinances requiring amusement devices to be 300 feet from schools may be repealed by ordinance.
  - 5824 Demolition or repair of unfit buildings not subject to bidding and Board of Public Works supervision, though bidding desirable and RCW 39.04.020 applicable — Revenue Sharing may be used on Housing Code enforcement program.
  - 5825 Municipal Firemen's Pension Board is authorized but not required to grant rehearings upon applications for RCW Chapter 41.18 pension benefits.
  - 5826 Effect of increase of minimum pensions under RCW 41.20.050, 41.20.060, 41.20.080 and 41.20.085 upon computation of 2% increase provided in RCW 41.26.250 and 41.26.260.
  - 5827 Freeway Park; Normandie Apartments relocation costs.
  - 5828 Use of Police limousine by Mayor during election campaign.
  - 5829 Measure of tax on "bingo games."
  - 5830 City without authority to license or regulate gambling activities authorized under Chapter 218, Laws of Washington 1973, 1st Ex. Sess.
  - 5831 Computation of required percentage of signatures on referendum petition.
  - 5832 Signatures required for referendum validation.
  - 5833 Application of Ordinance 100241 (Fair Campaign Practices).
  - 5834 Application of assignment of earnings to Department of Social and Health Services under RCW 74-20A.240 to fireman's disability leave allowance under RCW 41.26.120.
  - 5835 Public corporations limited to duties "arising under" and programs "provided for" in federal grant contracts.
  - 5836 Disclosure Civil Service Examinations.
  - 5837 Potential liability for earth slide in unimproved alley.
  - 5838 Officer engaging in private employment outside regular office hours.
  - 5839 Repair - Magnolia Bridge, East half.

#### IV. ORDINANCES, RESOLUTIONS AND MISCELLANEOUS

During the year 1973, this department prepared 771 ordinances and 79 resolutions; and an additional 86 ordinances were prepared for the settlement of 523 claims.

Claims for past due accounts, certain costs incurred by the City, and damages to City vehicles and property were forwarded by other

departments to this department for collection. By suits and settlement we have collected a number of these claims and forwarded the same to the City Treasurer.

192 writs of garnishment against City employees were served upon the City. A total of 147 first answers were filed on writs of garnishments and 67 second answers to 30-day continuing lien garnishments were filed during the year. 38 garnishments were released during the year before any action was required on the part of the City.

700 surety bonds, deeds and other miscellaneous instruments totaling in excess of \$30 million were examined and approved.

Legal papers served and filed during 1973, including condemnation suits, summons and petitions, answers, judgments, notices of appearance and subpoenas, totaling 3893 in all were handled by the Process Server.

## V.

### PROSECUTION OF ORDINANCE VIOLATIONS

#### Municipal Court

During the year 1973 Assistants Robert M. Elias, Robert B. Johnson, Jack B. Regan, and Joseph T. Schlosser handled calendars which totaled 60,248 cases in the four departments of Municipal Court resulting in the imposition of fines and forfeitures in the amount of \$1,173,750.

Traffic Violations Bureau forfeitures for the year amounted to \$3,316,734.

Also during the year 1973, Assistant Richard S. Oettinger processed and presented 109 cases involving violations of the Minimum Housing Code.

#### Municipal Court Appeals

Appeals from 996 convictions in Municipal Court (557 Traffic, 439 Police) were disposed of in King County Superior Court in 1973 as follows: 243 appeals (115 Traffic, 128 Police) were abandoned by the defendants and remanded to Municipal Court for enforcement of the original fines and sentences. In 312 cases (176 Traffic, 136 Police) convictions on pleas of guilty were entered. In 221 cases (168 Traffic, 53 Police) the court or jury found the defendants guilty after trial. In 80 cases (57 Traffic, 23 Police) the defendants were acquitted. In an additional 18 cases (7 Traffic, 11 Police) the sentencing of defendants was deferred. In 122 cases (34 Traffic, 88 Police) all charges were dismissed for insufficiency of evidence, witnesses moving away, or other causes.

### STATE SUPREME COURT CASES - 1973

*Seattle v. Bittner, et al.*, 81 Wn.2d 747.

In these consolidated criminal actions, defendants were charged and convicted of violations of Seattle's License Code for operating motion picture theaters without licenses. In one case, the licensee's application

for renewal of a theater license was denied by the City Council on the ground that one of its officers had been convicted of exhibiting obscene motion pictures. In the other, an initial license request was suspended pending a Justice Court prosecution involving sale of obscene materials.

The court held that the imposition of license sanctions as a result of criminal convictions relating to obscenity constituted an impermissible prior restraint upon free expression of speech, and therefore violated the First and Fourteenth Amendments to the United States Constitution. The rationale of the court was that the Constitution does not permit a licensing agency to deny to any citizen the right to exercise one of his fundamental freedoms on the ground that he has abused that freedom in the past. In effect, the court held that in cases involving obscenity convictions, the State is limited to imposition of direct penalties under the criminal law.

In a concurring opinion, however, the court made it clear that the City is not precluded for the enforcement of appropriate licensing provisions for theaters which involve fire, sanitation, structural or other hazards affecting the safety and health of the public who patronize such establishments.

This case was tried and argued by Assistant Arthur T. Lane.

*Eggert v. City*, 81 Wn.2d 840

This action was brought by three applicants for positions in the classified civil service who contended that the preference in employment granted by Article XVI, §§ 6 and 8 to "residents of the city for one year" violates the equal protection clause of the United States Constitution and their constitutionally protected right to travel. The King County Superior Court upheld such contentions and the Washington Supreme Court affirmed, basing their decision in part upon the recent decision of the United States Supreme Court in *Dunn v. Blumstein*, 405 U.S. 330 (1972) which struck down a one-year durational residency requirement for eligibility to vote.

This case was tried and argued by Assistant E. Neal King.

*Eastlake Community Council v. Roanoke Associates*, 82 Wn.2d 475

This was an action commenced by two community associations to secure an injunction against construction of a 128 unit, 5 story condominium over privately-owned shorelands in Lake Union. The original building permit was issued on May 8, 1969 "subject to structural and ordinance check," and no substantial development permit under the Shoreline Management Act of 1971 was required because work had started prior to June 1, 1971, the effective date of the Act.

The suit was dismissed by the trial court, but on appeal the Supreme Court held that the building permit, issued prior to and conditional upon checking the plans, was invalid as not in conformity with the Building Code and could not be validated by subsequent compliance, and that the third renewal of the building permit on October 17, 1971 was unlawful because no environmental impact statement was prepared or issued (the State Environmental Policy Act (SEPA) became effective on August 9,

1971). The Court also held that a substantial development permit will be required if construction of the project is to continue.

The developer has filed an application for a conditional use permit and certain associated variances to continue the project at a reduced scale and has filed an action for damages for \$7,000,000 against the City alleged to have been caused by the City's action in issuing an invalid building permit, both of which are still pending.

This case was tried and argued by Assistant Gordon F. Crandall.

*City v. Pullman*, 82 Wn.2d 794

Defendant was charged and convicted in both Seattle Municipal Court and on appeal in King County Superior Court of a violation of Section 4 of Ordinance 95984 (Curfew Ordinance) which makes it unlawful -

“ . . . for anyone not the parent or guardian of any child under the age of eighteen years, or any one not having the express consent of such parent or guardian, to be with or accompany any such child who at the time is violating . . . ”

Section 2 of said ordinance which makes it unlawful for such child to loiter, idle, wander or play on or in the streets, sidewalks, highways, alleys, parks or other public places or in an automobile or other conveyance or in or upon unoccupied premises or grounds during curfew hours.

The Washington Supreme Court, with three judges dissenting by separate opinion, reversed defendant's conviction and held the City's Curfew ordinance to be (1) unconstitutionally vague on the ground that the words “loiter, idle, wander or play do not provide ascertainable standards for locating the line between innocent and unlawful behavior”; and (2) an unreasonable exercise of the police power for the reason that such ordinance “bears no real or substantial relationship to the proclaimed governmental interest — the protection of minors.”

This case was tried and argued by Assistant Myron L. Cornelius.

*City v. Hinkley*, 83 Wn.2d 205

This case involved the constitutionality of Section 16-A or Ordinance 16046 prohibiting “topless” dancing by female entertainers in public places serving alcoholic beverages.

The charge against the defendant arose from his having permitted such entertainment to take place while acting as the manager of the Lucky Lady Tavern in Seattle. Upon an appeal from his conviction in Seattle Municipal Court, the King County Superior Court upheld the defendant's challenge to the constitutionality of the ordinance based on an asserted right to “freedom of expression.”

The City appealed to the Washington Supreme Court, which reversed the Superior Court ruling and held the ordinance to be valid on the ground that the regulation of “certain forms of entertainment” in establishments licensed to sell liquor by the drink “is not an unreasonable or unconstitutional act . . . ”

This case was tried and argued by Assistant Philip M. King.

STATE COURT OF APPEALS - 1973

*City v. Richard Bockman Land Corporation*, 8 Wn. App. 214

The defendant in this action was found guilty by a Superior Court jury of violating a Seattle Ordinance which required every floating home to be connected to a local side sewer system. On appeal defendant argued that the City had failed to prove that the Bockman Land Corporation was the owner of the floating homes, that the instructions to the jury were improper, and that defendant had been denied its right to a speedy trial. The Court of Appeals rejected each contention and affirmed appellant's conviction.

This case was tried and argued by Assistant Richard S. Oettinger.

*City v. Brenden*, 8 Wn. App. 472

This case involved the defendant's violation of Section 27.32.040 of the Minimum Housing Code by "occupying or allowing another to occupy a building found to be substandard and ordered to be vacated."

Defendant contended that because he was indigent and sentenced to imprisonment on this conviction he should have had an attorney appointed by the trial court to represent him pursuant to the United States Supreme Court case of *Argersinger v. Hamlin* 407 U.S. 25, 32 L.Ed.2d 530, 92 S.Ct. 2006 (1972). The Court of Appeals, affirming the conviction, held that the application of the *Argersinger* decision which came down after defendant's trial, was "prospective only," and further that defendant, a substantial property owner, "is not indigent."

Defendant also appealed from the imposition by the Superior Court after trial de novo of a more severe sentence than had been imposed at the prior trial in Seattle Municipal Court. The Court of Appeals held that the Superior Court could "properly sentence within the limits of the offended statute without regard to the prior sentence," but that the issue of "whether the sentence was increased as a penalty for having appealed is a proper question on review." On that issue, the Court of Appeals found that "the record reflects a reasonable basis for the sentence imposed . . . and no abuse of discretion."

This case was tried and argued by Assistant Philip M. King.

*P. Lorillard Co. v. City*, 8 Wn.App. 510

Plaintiff, a distributor of cigarettes, brought this action for refund of "business and occupation taxes" paid under protest, contending that RCW 82.02.020, which specifically preempts "the field of imposing taxes upon . . . cigarettes" and forbids municipal taxes "of that nature," prohibits the City from imposing its "business tax" under Ordinance 72630, measured as a percentage of gross proceeds derived from the sale of cigarettes. The City contended that RCW 82.02.020 forbids only a city cigarette tax "of the nature" of the state cigarette tax, and that the City's Business Tax Ordinance did not impose a tax on cigarettes, but rather a tax upon the privilege of doing business within the city; including the business of warehousing, storage, sale and delivery of cigarettes.

The Court of Appeals held that the "ultimate burden of the City business and occupation tax imposed upon the value proceeding or accruing from the sale of cigarettes is an invasion of the field of taxation that the state has retained to itself," and affirmed the judgment of the trial court that plaintiff was entitled to exclude the gross proceeds of cigarette sales in calculating the amount of tax due under Ordinance 72630.

The Supreme Court has granted the City's petition for review.

This case was tried by Assistant E. Neal King and argued on appeal by Assistant Jorgen G. Bader.

*Wigmosta v. City*, 8 Wn.App. 681

Plaintiff, who had been retired for several years from the Seattle Fire Department for a disability determined by the City's Firemen's Pension Board to have not been incurred in the performance of duty, sought to obtain a new determination from said Board that his disability was incurred in the performance of duty. After considering the evidence of plaintiff's medical witnesses and medical reports previously obtained by the Board at the time of plaintiff's original application for retirement, the Board reaffirmed its decision that plaintiff's disability was not incurred in the performance of duty. The Board's decision was reversed by the trial court which found on the basis of testimony and evidence presented at trial, but not presented to the Board, that the Board had acted "arbitrarily" in making such decision. The Court of Appeals reversed, holding that the Board's decision could be reviewed only to determine whether the Board had acted arbitrarily and capriciously, and that the trial court went beyond the scope of proper judicial review in judging the credibility of the various medical experts who furnished evidence to the Board, and in considering testimony and evidence which was not considered by the Board.

This case was tried and argued by Assistant E. Neal King.

*City v. Worton*, 8 Wn. App. 1014

The defendant in this case appealed from a conviction of driving while under the influence of intoxicating liquor. Contending that he was not timely released upon payment of bail, defendant argued that he was thereby denied the right to obtain evidence of his sobriety.

The Court of Appeals affirmed defendant's conviction, agreeing with the following statement of a California court:

"While it may be true that it would have been more convenient for appellant to go out on bail to seek a physician, mere convenience is not the test . . . Here, appellant under the facts as disclosed by the petition, never requested that a physician be called to administer a blood alcohol test. Under these circumstances, it can hardly be said that appellant was denied a reasonable opportunity to obtain evidence for his defense.", and further found that the relationship between his condition at the time of his arrest and at his release from jail more than four hours later could have been established by competent testimony.

The case was tried and argued by Assistant Richard S. Oettinger.

*14,766 Seattle Voters v. Erlandson*, 9 Wn.App. 409.

This action was commenced to require the City Clerk to verify signatures on a referendum petition and to transmit the same to the City Council. Plaintiffs filed 8,379 signatures on October 13, 1972, and on October 14, 1972, a Saturday, placed in the mails an additional 6,376 signatures which were received by the City Clerk on the following Monday morning, after the time for filing petitions had expired.

The Superior Court dismissed the action, holding that the petitions were not timely filed. The Court of Appeals affirmed, replying principally upon *State ex rel. Uhlman v. Melton*, 66 Wn.2d 157 (1965), and held that RCW 1.12.070 which authorizes the filing of certain documents by mail does not apply to referendum petitions.

The case was tried and argued by Assistant Gordon F. Crandall.

*Massie v. Brown*, 9 Wn.App. 601

Plaintiffs were four warrant servers in the City's Traffic Violations Bureau who were appointed provisionally because no civil service examinations had been given for the warrant server classification. When a civil service examination for such classification was administered, two of the plaintiffs failed, and the other two did not obtain a sufficiently high score to be appointed under the top 5 or 25% formula provided in Article XVI, § 9 of the Charter. Plaintiffs commenced this action to prevent being replaced, and contended that because Article III, § 2 provides that the various departments of the City "with the exception of the Judicial, Library and Transportation Departments, so long as they are constituted in accordance with the provisions of state law, shall be constituted as hereinafter provided . . .," it follows therefrom that because the Judicial Department, i.e., the Seattle Municipal Court, is constituted in accordance with state law, none of the provisions of the Charter including the provisions establishing a civil service system has any application to the Traffic Violations Bureau which is a part of the Seattle Municipal Court. The trial court upheld this contention. The decision was appealed to the Court of Appeals, which affirmed. The majority opinion ruled that the City's civil service system cannot be applied to personnel directly connected with the operation of the municipal court because this would constitute "an invasion of the independence of the judiciary" and violate the separation of powers doctrine. One judge declined to follow the reasoning of the majority opinion, but agreed with the reasoning of the trial court. The Washington Supreme Court has granted appellants' petition for review and the case will be argued during that court's May, 1974 term.

This case was tried and argued by Assistant E. Neal King.

*City v. Larkin*, 10 Wn. App. 205

Plaintiff appealed from convictions of two violations of the hitchhiking ordinance (Seattle Code Section 21.14.300). Plaintiff asserted that the ordinance infringed on his constitutionally protected

right to travel and that the prosecution was prohibited by a retroactive application of RCW 46.61.255. The Court of Appeals affirmed the trial court on the basis that the ordinance was, at most, an indirect and minor infringement on appellant's right of travel and that there was nothing in the wording of RCW 46.61.255 to indicate an intent of the legislature to make it retroactive.

The case was tried and argued by Assistant James G. Blair.

*City v. Mac Amusement Co. et al.*, 9 Wn. App. 1020

This was a declaratory judgment action by the City to have defendants' carnival-type "amusement games" at the Seattle Center Fun Forest declared in violation of a City ordinance making it unlawful for any person "to conduct . . . any . . . game whatever for the purpose of gambling."

The Superior Court dismissed the case, holding that defendants' activities were not gambling and not proscribed by the ordinance. The City appealed. While the appeal was pending, the state legislature extensively modified the state's gambling laws and the Seattle ordinance under which this action had been filed was repealed. The Court of Appeals deemed the case to be moot and the City's appeal was dismissed.

The case was tried by Assistant Lawrence K. McDonell and argued by Assistant J. Roger Nowell.

**NOTEWORTHY SUPERIOR COURT PROCEEDINGS - 1973**

*Blair v. City*, No. 766161

Plaintiff, who alleged that he was "a resident and taxpayer of the City of Seattle," brought this action against the City, its Civil Service Commission, and the person provisionally appointed to the position of Secretary of the Board of Public Works, and sought to obtain (1) a declaratory judgment invalidating the Civil Service Commission rule on provisional appointments; (2) an injunction barring payment of salary to the person provisionally appointed to the position of Secretary of the Board of Public Works; (3) an order requiring the Civil Service Commission to forthwith "hold examinations for all positions of classified service occupied by provisionals for more than sixty days"; (4) a permanent injunction barring defendants from violating the Charter provisions relating to appointments in the classified civil service; and (5) other relief including an injunction against the City Comptroller and City Treasurer from paying any further salaries to persons holding office in violation of the Charter provisions relating to appointments in the classified civil service. The Superior Court granted the City's and other defendants' motion for summary judgment dismissing plaintiff's action upon the ground that plaintiff did not have standing as a citizen and taxpayer to obtain such relief, as he had not shown or alleged any harm or injury to himself caused by the alleged violations of the City Charter and did not claim to hold or to be seeking any position in the City's classified civil service.

*Crooks Farm v. City*, No. 764938.

The owner of Ray's Boathouse on Shilshole Bay commenced this action to require issuance of a building permit for a reinforced concrete deck over two-thirds of the present wooden deck of a pier on the premises without first obtaining a substantial development permit for shoreline construction. The concrete deck would not change the use of bulk of the pier, but would have independent structural integrity.

The Superior Court held that the work was "normal maintenance and repair of existing structures or developments, including damage by accident, fire or elements," and ordered the City to issue a building permit without requiring a substantial development permit under the Shoreline Management Act of 1971.

*Romano v. Fairway Estates*, No. 766843.

Property owners in the vicinity of Sand Point Country Club contended that a two year time limit had been imposed upon construction of an apartment complex as a planned unit development, and that the building permit could not be renewed. Subsequently, after *Eastlake Community Council v. Roanoke Associates*, 82 Wn.2d 475 (1973) was decided, plaintiffs urged the failure of the City to prepare and circulate an environmental impact statement as an additional ground for relief.

The Superior Court concluded after trial that (1) neither the Zoning Ordinance nor the City Council had imposed a two-year completion requirement; (2) the action of the Superintendent of Buildings in renewing the permit was not arbitrary and capricious; and (3) while an environmental impact statement should have been prepared, the permit should not be rescinded because 95% of the vegetation had been removed and 40% of the mass excavation had been completed, leaving a totally unsupported embankment some 65 feet in height at its highest point. "To terminate this project," the court said, "would result in danger to the physical health and safety of property owners and persons and this case involves a situation where physical resources are irreversibly and irretrievably committed." An appeal was filed, but was later abandoned.

*Howard Hanson et al. v. City*, No. 759912.

This case was commenced by property owners in the vicinity of the Caroline Kline Galland Home at 7500 Seward Park Avenue South, alleging that the action of the City Council in approving a planned unit development to enlarge the capacity of the home was contrary to law. Plaintiffs alleged (a) that they were denied due process of law because the approval of the plans was based on matters considered in secret and through ex parte contacts by the proponents of the permit with members of the City Council; and (b) that the approval was arbitrary and capricious because no reasons were stated for the approval, the decision was based on information supplied outside the public hearing, expansion

of a nonconforming use is contrary to the purpose and policy of the zoning ordinance, and because a spot zone was created. In addition, at the trial the lack of an environmental impact statement was alleged as a reason to invalidate approval of preliminary plans.

The Superior Court dismissed the complaint. The court found that both proponents and opponents of the application had contact with City Council members who were not members of the Planning and Urban Development Committee following the public hearings before the Committee, but concluded that "there was nothing in these contacts that would cause a fair-minded stranger objectively evaluating the situation to conclude that either in fact or appearance there was any occurrence that improperly influenced or seemed to influence any of the council members." The court found also that the City Council's finding of no significant impact upon the environment was supported by substantial evidence.

*Brabant v. City*, No. 757364.

Plaintiff, a signal electrician with the Engineering Department, complained that his civil service rights under Article XVI, Section 9 of the City Charter were violated when a vacant Signal Electrician Foreman position was filled by a minority employee pursuant to "selective certification" under rule 7.03j of the Civil Service Commission. The City contended that the selection of a minority person to fill the provisional position was permissible and required under the Engineering Department's affirmative action program.

The Superior Court granted summary judgment for the City, and held that The City of Seattle had a legal duty to take affirmative action to eliminate the effects of past discrimination in City employee selection processes and to prevent such discrimination from occurring in the future; that the apparent conflict of such rule and charter provision was excused by overriding provisions of federal law; and that the necessity for such action was established by a statistical showing that the results of the Civil Service tests tend to show that minority applicants are often found in the lower end of the eligible registers where they have little or no chance of being selected.

Plaintiff has filed notice of appeal to the Court of Appeals.

*Veenbaas v. City*, No. 717801

This action arose out of an automobile accident in which plaintiff received severe head injuries, rendering him permanently incompetent, and for which injuries he sought \$800,000.

Several defendants were joined by plaintiff, including the driver of the car in which he was riding and the person responsible for the rented vehicle. The allegation against the City was that a Seattle Transit System bus had pulled out from the curb and interfered with the car plaintiff was in. The evidence disclosed, however, that both plaintiff and the driver of the car were intoxicated, were traveling at an extremely high rate of speed down a fairly steep, rain-slicked hill in West Seattle,

and had simply gone out of control. The only evidence relating to the bus was that it was moving very slowly in the curb lane on a four-lane road.

At the close of plaintiff's case, the City successfully challenged the sufficiency of the evidence against it and was dismissed from the action.

*Wilén v. City*, No. 773459

This was a wrongful death action brought as the result of the drowning of two women whose automobile fell from the Edgewater Inn pier parking lot into Puget Sound after going through or over several fences and barriers.

The City was joined as a defendant on the allegations that it was negligent "in failing to inspect, maintain or require proper maintenance or repairs of the parking area," which was entirely owned and under the exclusive control of other parties, and for failing to enforce ordinances relating to unsafe piers.

Prior to the time its answer was required, the City brought a motion to dismiss the complaint for failure to state a cause of action upon which relief could be granted, which motion was granted.

*Grigsby v. City*, No. 741946

In this action the plaintiff sought damages in the amount of \$50,000 for personal injuries he sustained as the result of an automobile accident. Plaintiff had been a passenger in a car involved in a head-on collision with another vehicle while traveling on Valentine Place South in Seattle. The cause of action against the City was for alleged improper design, construction and maintenance of its street.

Upon the trial of the case the City successfully objected to the introduction of any testimony by traffic engineering experts regarding their opinions as to the cause of the accident in question. The issue of the City's alleged negligence under the facts of the case, which showed that the driver of the automobile in which plaintiff was a passenger was familiar with the road at the location of the accident and had been driving in violation of several traffic statutes, was submitted to the jury. Judgment was entered on the verdict rendered in favor of the City, and from that judgment the plaintiff has appealed to the Court of Appeals.

*Thornton et al. v. City et al.*, No. 737504 (consolidated)

The above-captioned cases (collectively referred to as the Seventh Avenue Fire Cases) arose out of the fire at the Seventh Avenue Apartments on April 25, 1971, which fire resulted in deaths, personal injuries or property damage which became the bases for several lawsuits against the City. Plaintiffs and co-defendants in these consolidated actions sought a total of \$2,157,000 in damages from the City.

The *Swank* case was dismissed upon the City's motion, for failure of the plaintiff to file a claim for damages as required by law "within 120 days after the injuries alleged to have been sustained by plaintiff had occurred."

The *Thorton, Pickering, Reisen, Williams, Knust* and *Jackson* cases

were all dismissed with prejudice for the reason that plaintiffs' claim "that liability exists on the part of defendant City of Seattle for failure to enforce the provisions of its Fire and/or Building Codes with regard to the Seventh Avenue Apartments building . . . is insufficient as a matter of law to state a cause of action against defendant City of Seattle upon which relief can be granted."

All claims between the City and the co-defendants in the consolidated cases (Jitsuo Otoshi and Shina Otoshi, his wife, and Seventh Avenue Apartments, Inc.) were dismissed by an order entered November 14, 1973, pursuant to a stipulation between the City and these co-defendants.

*Shar Restaurants, Inc. v. City, No. 762646*

This action was brought to secure an injunction against the City to prevent its enforcing the "topless" dancing ordinances (Ordinance 16046, § 16-A) against employees of plaintiff's tavern, the Lucky Lady.

The constitutionality of the ordinances was challenged by plaintiff on First Amendment grounds, and it was contended that the prior acquittal of two of plaintiff's employees (Frank Leon Hinkley and Ruby Laverne Code) on charges brought under the ordinance collaterally estopped the City from enforcing the law, despite the later ruling of the United States Supreme Court on the issue in favor of such regulations.

After lengthy argument on the several legal issues raised, the trial court denied plaintiff's request for an injunction.

#### **NOTEWORTHY ADMINISTRATIVE PROCEEDINGS - 1973**

*I-90 Board of Review proceedings.*

As reported in the 1972 annual report, extended time and effort was devoted to representing the City before the I-90 Board of Review convened pursuant to RCW 47.52.139-.160. The City had objected to a plan submitted to the City for approval under said statute for the construction of Interstate 90 from the west shore of Lake Washington to the junction with Interstate 5. The City asked for replacement of certain lost access within and between communities and covering or "lidding" of the proposed facility between Empire Way South and 23rd Avenue South. The City presented over 60 witnesses including many expert witnesses in a wide variety of disciplines and produced a number of studies, surveys and the like to support its case. At the close of 1972 the Board had not yet rendered its decision and certain additional procedural matters before the Board were argued during the calendar year 1973. In April of 1973 the Board issued its Findings of Fact and Conclusions of Law which granted most of the changes asked for by the City except for certain minor aspects of replacement of lost access within and between communities. The cover on the facility from Empire Way South to 23rd Avenue South which the City had requested was mandated by the Board contingent upon the availability of a certain percentage of federal funding therefor.

*Shorelines Hearing Board.*

The Law Department continued to represent the Director of the Department of Community Development in presenting City interests in matters before the Shorelines Hearing Board created pursuant to the Shorelines Management Act of 1971. A number of matters reported in the 1972 Annual Report continued in 1973 including the permit issued to the Washington State Highway Commission for the third Lake Washington Bridge, the permit issued to the Ballard Elks' Lodge for their new clubhouse on Shilshole Bay, the denial of a permit to the Roanoke Associates, Inc. for boat moorage in Lake Union, and the denial of a permit for a fill for boat storage and launching on Beach Drive Southwest in Seattle.

*Federal Power Commission Application.*

During 1973, work continued on the City's administrative preparations in connection with its application for an amendment to the Skagit Hydro Electric Project License No. 553 to raise the height of Ross Dam.

*Interstate Commerce Commission Intervention - Abandonment of Burlington Northern Right of Way between Fremont and Kenmore.*

During 1973, to effectuate the City's proposed Burke/Gilman Trail, proceedings continued in connection with the City's intervention, granted by the I.C.C., in the Burlington Northern Railroad's proposed abandonment of its right of way between Fremont and Kenmore. In the proceedings the City contended that any I.C.C. abandonment orders should be preceded by compliance with provisions of the National Environmental Policy Act and appropriate consideration given to acquisition of such right of way by a public agency for park and recreation use. After issuance of a final Environmental Impact Statement and order authorizing disposition of the right of way, a subsequent petition by the City to amend such order was granted by the Commission on April 4, 1973, to allow continued negotiations between the City and Burlington Northern for additional public acquisition of the right of way. Agreement between the City and Burlington Northern is substantially complete.

*City Boards and Commissions*

Advisory assistance was provided to a number of City Boards and Commissions, including the Civil Service Commission, Design Commission, Planning Commission, Board of Public Works, Board of Adjustment, Police and Firemen's Pension Boards, Historic Preservation Boards, and Human Rights Commission.

### STAFF CHANGES

There were six additions to the staff in 1973. Mr. Parayil K. Abraham, formerly engaged in private practice, was appointed Assistant Corporation Counsel; Ms. Elizabeth A. Cochran transferred from the Seattle Model City Program as Secretary, from which position she resigned to locate residence in California; Ms. Roberta M. Lyons transferred from the Purchasing Division to assume secretarial duties in the Claim Division; the Legal Intern Program continued through 1973 with Ms. Sophie M. Johnson and Mr. Phillip Aaron appointed to one year terms to replace Mr. Freddie Bonner and Mr. Plummer E. Lott.

# The City of Seattle--Legislative Department

MR. PRESIDENT:

Date Reported  
and Adopted

Your Committee on HUMAN RESOURCES AND JUDICIARY

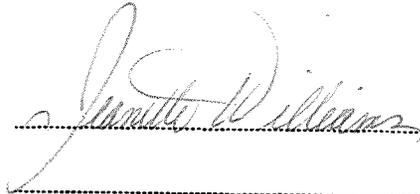
APR 15 1974

to which was referred Comptroller's File 278729

City of Seattle Law Department 1973 Annual Report,

RECOMMENDS THAT THE SAME BE PLACED ON FILE.

..... Chairman



HR & J

..... Chairman